

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION

Public Reprimand With Consent

2006-OLR-1

KATHLEEN A. SINCLAIR,

Attorney at Law

The Respondent, Attorney Kathleen A. Sinclair, 39, practiced in Wauwatosa, Wisconsin. This reprimand is based on Respondent's conduct in two separate matters.

In the first matter, the police stopped F.B. on December 9, 2001 for a traffic violation during which cocaine was found. On December 11, 2001, the district attorney charged F.B. with possession with intent to deliver cocaine. While represented by trial counsel, F.B. made a motion to suppress evidence resulting from the traffic stop, but later withdrew the motion and pled guilty.

On August 8, 2002, the State Public Defender appointed Attorney Sinclair to represent F.B. in his efforts to obtain post-conviction relief. On August 14, 2002, the State Public Defender ordered transcripts of all the hearings. Attorney Sinclair received all the transcripts, except for the hearing on December 27, 2001, at which F.B. waived his preliminary hearing.

On November 17, 2002, F.B. sent a letter to Attorney Sinclair, informing her that he had received notice of her appointment. Having not received a response from her, F.B. wrote Attorney Sinclair again on February 20, 2003. After again failing to receive a response, F.B. wrote to the Office of Lawyer Regulation on March 19, 2003, stating that he had not heard from Attorney Sinclair since her appointment in August 2002.

On June 27, 2003, Attorney Sinclair informed the Office of Lawyer Regulation that she had sent letters to F.B. on August 19, 2002, November 21, 2002, and March 3, 2003. These letters, which she provided to the Office of Lawyer Regulation, inform F.B. that she was awaiting the transcript of December 27, 2001, that she was busy because of tax season, and that she was suffering from the results of domestic abuse. Attorney Sinclair also stated that she intended to file a motion with the Court of Appeals for an extension of time to seek post-conviction relief. The Office of Lawyer Regulation provided Attorney Sinclair's response to F.B., who stated his desire that Attorney Sinclair would contact him to discuss whether she was going to assist him.

On August 5, 2003, the Office of Lawyer Regulation found no record of the request for an extension, and asked Attorney Sinclair to explain. On August 28, 2003, Attorney Sinclair responded that she sent the motion to the Court of Appeals on June 27, 2003, but that the documents failed to arrive for unexplained reasons. She re-filed the motion on August 11th.

Also on August 5, 2003, Attorney Sinclair wrote F.B., claiming that she had responded to each of his letters. F.B. asserted that the August 5th letter was the first he had ever received from Attorney Sinclair. Nevertheless, he recognized that Attorney Sinclair had experienced personal problems, and was willing to work with her.

On October 28, 2003, Attorney Sinclair spoke with F.B. over the telephone to discuss the case. They decided that Attorney Sinclair would file a motion to withdraw his plea based upon ineffective assistance of trial counsel, that F.B. would send 911 transcripts and police reports to Attorney Sinclair, and that Attorney Sinclair would contact trial counsel and F.B.'s son, who was present during the traffic stop. The claim of ineffective assistance would allege that trial counsel should have moved to suppress evidence based upon an illegal stop and search.

Attorney Sinclair obtained an extension to file the motion until November 30, 2003. Prior to filing the motion on November 26, 2003, Attorney Sinclair failed to interview either the son or the trial counsel. She provided no supporting affidavits with the motion.

On December 16, 2003, the Court denied Attorney Sinclair's motion, stating that the motion was "completely conclusionary and unsupported by any affidavit from the defendant as to what he understood, or failed to understand, concerning the withdrawal of the suppression motion." The Court also found that there was not "an adequate showing that a motion to suppress would have been successful."

Attorney Sinclair had 20 days in which to file for reconsideration. She claims that she sent F.B. a letter on December 18, 2003 advising him of his options. F.B. denied ever receiving this letter. F.B. wrote to the Office of Lawyer Regulation on January 6, 2004, stating that he had not heard from Attorney Sinclair since their telephone conference on October 28th. Attorney Sinclair did not file a motion to reconsider. F.B.'s post-conviction rights expired in January 2004.

On February 12, 2004, the Office of Lawyer Regulation directed Attorney Sinclair to respond to F.B.'s allegations by March 8, 2004. On March 8, 2004, Attorney Sinclair asked for an extension until March 15th because she was undergoing a medical procedure. On March 15th, Attorney Sinclair advised the Office of Lawyer Regulation via facsimile that she had assembled all the information requested, but due to a headache would not be able to mail it until the next day.

Having not received the information by March 24, 2004, the Office of Lawyer Regulation wrote Attorney Sinclair, directing that she respond by March 31st. On April 6, 2004, and April

21, 2004, having not received a response, the Office of Lawyer Regulation again sent requests for a response.

On May 6, 2004, Attorney Sinclair sent a facsimile to the Office of Lawyer Regulation. She stated that she sent her response in March, that she kept no paper copies, that she needed to recover the information from her computer, and that her computer was down, having crashed in December 2003.

On May 15, 2004, Attorney Sinclair responded to the Office of Lawyer Regulation. The response is dated February 12, 2004. In her response, Attorney Sinclair claimed that she returned F.B.'s 911 transcripts and police reports in December 2003, which F.B. denies; she claimed to have left messages with the court reporter to obtain the transcript of the December 27, 2001, hearing, which the court reporter denies; she claimed to have been working on finding trial counsel, whose address was on file with the State Public Defender and State Bar; she claimed that the reason she had not interviewed F.B.'s son prior to filing the motion to withdraw the plea was because F.B.'s mother had promised and then failed to contact her, which F.B.'s mother denies; and she claimed to have sent a letter to F.B. on December 18, 2003, explaining his options after the motion was denied; F.B. denies receiving the letter.

By filing the motion to withdraw F.B.'s plea without interviewing the witnesses or trial counsel, without providing any supporting affidavits, and without providing a showing that a motion to suppress would have been successful, Attorney Sinclair failed to provide competent representation in violation of Supreme Court Rule 20:1.1.

By failing to take action on F.B.'s post-conviction relief from August 2002 to August 2003, and only after being contacted by the Office of Lawyer Regulation; and further, by failing

to act and thereby allowing F.B.'s post-conviction rights to lapse after the motion to withdraw was denied, Attorney Sinclair failed to act with reasonable diligence in violation of SCR 20:1.3.

By failing to respond to F.B.'s letters or to otherwise communicate with him during the period from August 2002 to February 2004, with the exception of a letter on August 18, 2003, and a two-hour phone conference in October 2003, Attorney Sinclair failed to keep her client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information in violation of Supreme Court Rule 20:1.4(a).

By failing to respond to the Office of Lawyer Regulation in early 2004, and by creating and submitting documents to the Office of Lawyer Regulation in order to obstruct the investigation, Attorney Sinclair failed to cooperate with an investigation in violation of Supreme Court Rules 20:8.4(f), 21.15(4), and 22.03(6).

In the second matter, on December 24, 2001, the State charged Q.M. with two counts of fleeing and eluding an officer, causing great bodily harm to one and death to another, in violation of section 346.04(3). On March 12, 2002, Q.M. pled no contest to the charges. On June 28, 2002, he was sentenced, among other things, to five years in prison.

Attorney Sinclair represented Q.M. on appeal. Between August 19, 2002, and October 22, 2002, Attorney Sinclair was sent transcripts and court records. She filed a notice of appeal on December 24, 2002.

The appeal became delinquent on February 7, 2003. On April 16, 2003, Attorney Sinclair moved to extend the time to file her brief. The Court of Appeals extended the time until May 30, 2003. Attorney Sinclair failed to file the brief by May 30th.

Because the brief had not been filed, on June 6, 2003, the Court of Appeals ordered the brief to be filed within five days. Attorney Sinclair received this order. On June 26, 2003, the

Court again ordered Attorney Sinclair to file the brief within five days. Attorney Sinclair admits that she received this order and claims that she mailed a no merit brief on June 27, 2003. The Court did not receive the brief.

On July 14, 2003, the Court attempted to contact Attorney Sinclair by phone and learned that her phone had been disconnected. Subsequently, the Court referred the case to the State Public Defender for assignment of successor counsel. On August 4, 2003, the State Public Defender moved for an extension to appoint successor counsel and file a brief. The Court granted the motion and dismissed the appeal.

On August 7, 2003, the Court of Appeals dismissed Q.M.'s appeal. The Court of Appeals extended the time for pursuing post-conviction relief. Successor counsel was sent the file on August 29, 2003. The conviction was ultimately affirmed.

By failing to file a brief in the Q.M.'s case despite an extension and two orders from the Court of Appeals, resulting in her removal from the case and dismissal of the appeal, Attorney Sinclair failed to act with reasonable diligence and promptness in violation of SCR 20:1.3, and knowingly disobeyed an obligation under the rules of a tribunal in violation of SCR 20:3.4(c).

In accordance with SCR 22.09(3), Attorney Kathleen A. Sinclair is hereby publicly reprimanded.

Dated this 18th day of January, 2006.

SUPREME COURT OF WISCONSIN

/s/ Richard C. Ninneman
Richard C. Ninneman, Referee